

HOUSE BILL 2751
By Herron

AN ACT to enact the "Alternative Dispute Resolution Act of 1996".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. In this act, "alternative dispute resolution system" means an informal forum in which mediation, conciliation, or arbitration is used to resolve disputes among individuals, including those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.

SECTION 2.

(a) The general sessions court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of citizen disputes.

(b) The general sessions court may do all necessary acts to make the alternative disputes resolution system effective, including:

(1) contracting with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities for the purpose of administering the system;

(2) making reasonable rules relating to the system; and

(3) vesting management of the system in a committee selected by the county bar association.

(c) The actions of a committee authorized by subsection (b)(3) are subject to the approval of the general sessions court.

SECTION 3. A judge of a trial court, general sessions court, juvenile court, probate court, or family court in a county in which an alternative dispute resolution system has been established may, on motion of a party, refer a case to the system. Referral under this section does not prejudice the case.

SECTION 4.

(a) As used in this act:

(1) "Court" includes an appellate court, trial court, general sessions court, family law court, probate court, or juvenile court.

(2) "Dispute resolution organization" means a private nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative dispute resolution services to the public.

SECTION 5. It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

SECTION 6.

(a) It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy established in Section 6.

SECTION 7.

(a) A court may, on its own motion or the motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:

(1) an existing dispute resolution organization; or

(2) a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including alternative dispute resolution procedures described under this act.

(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.

SECTION 8.

(a) If a court determines that a pending dispute is appropriate for referral under Section 8, the court shall notify the parties of its determination.

(b) Any party may, within ten (10) days after receiving the notice under subsection (a), file a written objection to the referral.

(c) If the court finds that there is a reasonable basis for an objection filed under subsection (b), the court may not refer the dispute under Section 8 of this act.

SECTION 9.

(a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

(b) A mediator may not impose his own judgment on the issues for that of the parties.

SECTION 10.

(a) A mini-trial is conducted under an agreement of the parties.

(b) Each party and counsel for the party present the position of the party, either before selected representatives for each party or before the impartial third party, to define the issues and develop a basis for realistic settlement negotiations.

(c) The impartial third party may issue an advisory opinion regarding the merits of the case.

(d) The advisory opinion is not binding on the parties unless the parties agree that it is binding and enter into a written settlement agreement.

SECTION 11.

(a) A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of impartial third parties.

(c) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(d) The advisory opinion is not binding on the parties.

SECTION 12.

(a) A summary jury trial is a forum for early case evaluation and development of realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of jurors.

(c) The number of jurors on the panel is six (6) unless the parties agree otherwise.

(d) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(e) The advisory opinion is not binding on the parties.

SECTION 13.

(a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award.

(b) If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations.

SECTION 14.

(a) If a court refers a pending dispute for resolution by an alternative dispute resolution procedure under Section 8, the court may appoint an impartial third party to facilitate the procedure.

(b) The court may appoint a third party who is agreed on by the parties if the person qualifies for appointment under this section.

(c) The court may appoint more than one third party under this section.

SECTION 15.

(a) Except as provided by subsections (b) and (c), to qualify for an appointment as an impartial third party under this section a person must have completed a minimum of forty (40) classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making this appointment.

(b) To qualify for an appointment as an impartial third party under this section in a dispute relating to the parent-child relationship, a person must complete the training required by subsection (a) and an additional twenty-four (24) hours of training in the fields of family dynamics, child development, and family law.

(c) In appropriate circumstances, a court may in its discretion, appoint a person as an impartial third party who does not qualify under subsection (a) or (b) if the court bases its appointment on legal or other professional training or experiences in particular dispute resolution processes.

SECTION 16.

(a) A person appointed to facilitate an alternative dispute resolution procedure under this act shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(b) Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter in the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.

SECTION 17.

(a) The court may set a reasonable fee for the services of an impartial third party appointed under this act.

(b) Unless the parties agree to a method of payment, the court shall tax the fee for the services of an impartial third party as other costs of the action.

SECTION 18.

(a) A person appointed to facilitate an alternative dispute resolution procedure under this act, or appointed by the parties whether before or after the institution of a formal judicial proceeding, who is a volunteer and who does not act with wanton and willful disregard of the rights, safety, or property of another, is immune from civil liability for any act of omission within the course and scope of his or her duties or functions as an impartial third party. For purposes of this section, a volunteer impartial third party is a person who does not receive compensation in excess of reimbursement for expenses incurred or a stipend intended as reimbursement for expenses incurred.

(b) This section neither applies to nor is it intended to enlarge or diminish any rights or immunities enjoyed by an arbitrator participating in a binding arbitration pursuant to an applicable statute or treaty.

SECTION 19.

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

SECTION 20.

(a) The Tennessee Supreme Court shall determine the need and method for statistical reporting of disputes referred by the courts to alternative dispute resolution procedures.

SECTION 21.

(a) Except as provided by subsections (c) and (d), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

SECTION 22. The presiding judge may use any available funding from funds regularly used for court administration to carry out the purpose and intent of this act. The presiding judge shall cooperate with the director of any established mediation or alternative dispute

resolution center, the local bar association, and other organizations to encourage participation and to develop public awareness of settlement weeks.

SECTION 23. This act shall take effect July 1, 1996, the public welfare requiring it.

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